



Federal Communications Commission  
Washington, D.C. 20554

February 25, 2020

Hearst Stations Inc.  
PO Box 1800  
Raleigh, NC 27602

Re: Request for Tolling  
WCVB-TV, Boston, MA  
Facility ID No. 65684  
LMS File No. 0000100424

Dear Licensee,

On January 27, 2020, Hearst Stations, Inc. (Hearst), the licensee of WCVB-TV, Boston, Massachusetts (WCVB or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant Hearst's request and toll the expiration date of WCVB's construction permit to July 27, 2020.

*Background.* Pursuant to Section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>2</sup> The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.<sup>3</sup> If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.<sup>4</sup>

Hearst requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. WCVB is currently operating on its post-auction channel with temporary facilities.<sup>5</sup> WCVB was previously granted an 180-day construction permit extension to

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

<sup>5</sup> See LMS File No. 0000080192. WCVB was repacked from channel 20 to channel 33.

January 29, 2020.<sup>6</sup> Hearst states that the tower and transmitter site for WCVB post-transition facility is complex. Specifically, WCVB currently shares an antenna and transmission line with three other television stations—WBZ-TV, WGBX-TV, and WSBK-TV—all of which are transitioning to new channels. Final preparations on the tower are continuing but will not be complete by the Station's current construction permit expiration date. Hearst states the tower crew returned to the site later in January 2020 but has not yet completed the work necessary for WCVB and other stations to commence their final post-auction channel operations. Therefore, Hearst is requesting that the Commission waive its tolling rule and toll the WCVB construction permit expiration date to July 27, 2020.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit to July 27, 2020. Hearst has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays resulting from the complexity of the tower site and need to coordinate with multiple other stations. We also find that grant of Hearst's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WCVB has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WCVB's signal while it operates using its interim facility, we believe that Hearst has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind Hearst that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."<sup>7</sup> Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Hearst Stations, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034567) for WCVB-TV, Boston, Massachusetts **IS TOLLED to July 27, 2020**. Grant of this tolling waiver does not permit WCVB to recommence operation on its pre-auction channel. We also remind Hearst that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Stephen Hartzell, Esq.

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<sup>6</sup> See LMS File No. 0000072233.

<sup>7</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

<sup>8</sup> See 47 § CFR 73.3598(b).